(3)

No. 09-46

IN THE

Supreme Court of the United States

UNITED STATES OF AMERICA ex rel. Lokesh Vuyyuru,
Petitioner,

v.

GOPNATH JADHAV, M.D.; SOUTHSIDE GASTROENTEROLOGY ASSOCIATES, LIMITED; COLUMBIA/HCA JOHN RANDOLPH, INCORPORATED; PETERSBERG HOSPITAL COMPANY, LLC; CAMERON FOUNDATION, A VIRGINA NON-PROFIT CORPORATION,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR REHEARING

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PETITION FOR REHEARING

The petitioner herein respectfully moves this Court for an order (1) vacating its denial of the petition for writ of certiorari, entered on October 5, 2009, (2) granting the petition, and (3) remanding this case to the district court with instructions to allow petitioner to file his fourth amended complaint. A copy of petitioner's proposed fourth amended complaint is bound herewith as Appendix A. As grounds for this motion, petitioner states the following:

1. PETITIONER IS PERMITTED TO AMEND HIS ALLEGATIONS OF JURISDICTION PURSUANT TO 28 U.S.C. § 1653.

The United States District Court for the Eastern District of Virginia dismissed petitioner's Third Amended Complaint (TAC) under Federal Rules of Civil Procedure 12(b)(1) holding that the jurisdictional bar set forth in 31 U.S.C. § 3730(e)(4) barred petitioner's federal False Claims Act claims. The District Court held that the allegations of the TAC were actually derived from ten news articles published in the *Virginia Times*, a newspaper published by the petitioner, relator Lokesh Vuyyuru, who in addition to publishing the *Virginia Times* was also a practicing physician. (Memorandum Opinion at 75a, Petitioner's Appendix C to petition for certiorari.) The United States Court of Appeals for the Fourth Circuit held that the District Court's finding was not clearly erroneous and should be affirmed. (Opinion at 29a, Petitioner's Appendix A.) The District Court and Fourth Circuit also held that petitioner had not established that he was the "original source" of the

allegations which, in the courts' view, were derived from the newspaper articles because petitioner had not demonstrated that he had direct and independent knowledge of the alleged false claims. The District Court based its holding on the court's conclusion that petitioner had not shown "*exactly how and when*" petitioner had obtained knowledge of the alleged false claims. (Memorandum Opinion at 76a-77a, Petitioner's Appendix C to petition for certiorari.) The Fourth Circuit affirmed the District Court's finding under the clearly erroneous standard. (Opinion at 30a, Petitioner's Appendix A to petition for certiorari.)

Pursuant to 28 U.S.C. § 1653, "Defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts." Here, the jurisdictional defects found by the lower courts are curable by amendment. The allegations of petitioner's proposed Fourth Amended Complaint, attached as Appendix A, demonstrate that the allegations of false claims derive not from the articles published in his newspaper, but rather from the petitioner's direct and independent knowledge of the false claims and other actions of the respondents. Since the petitioner is the original source of the allegations, he should be able to proceed in federal court under 31 U.S.C. § 3730(e)(4)(B). In a case decided earlier this year, the Second Circuit permitted amendment of a complaint at the appellate level pursuant to 28 U.S.C. § 1653 to properly allege diversity jurisdiction and remanded the case to the district court to make supplemental findings of fact regarding the existence of jurisdiction. *Durant, Nichols, Houston, Hodgson, & Cortese-Costa, P.C. v. Dupont*, 565 F.3d 56, 65 (2d Cir. 2009). *See also, Wade v. Morrow*, 15 F.2d 660

(8th Cir. 1926) (case remanded to permit plaintiff to amend complaint to allege diversity jurisdiction).

The Supreme Court has indicated that 28 U.S.C. § 1653 applies when the case is before this Court as well as at the circuit court of appeals level. *Chandler v. Miller*, 520 U.S. 305, 313 n.2 (1997) (petitioner could amend under § 1653 after oral argument to avoid suggestion of mootness). Defective allegations of jurisdiction may even be cured by supplemental pleading, as opposed to amended pleading, after the case has arrived at the Supreme Court level where jurisdictional prerequisites are met after the complaint is originally filed in the district court. *Mathews v. Diaz*, 426 U.S. 67, 75, n.9 (1976).

Section 1653 of Title 28 is usually construed liberally to allow an action to proceed. *Aurecchione v. Schoolman Transp. Sys.*, 426 F.3d 635, 639 (2d Cir. 2005) (citing *Carson v. Allied News Co.*, 511 F.2d 22, 24 (7th Cir. 1975)).

Petitioner's application to amend his complaint to correct any perceived defects in the jurisdictional allegations is particularly compelling in light of the fact that respondents and their attorneys are well aware that petitioner is the original source of the allegations of fraudulent billing practices. Throughout the course of this litigation, respondents have pointed to the similarity of the newspaper articles published in 2005 to the allegations of the petitioner's complaint filed in March 2006. Respondents have convinced the District Court and Fourth Circuit that the court's jurisdiction to entertain petitioner's complaint is barred because the

allegations of the complaint were based upon the published articles and that petitioner is not the original source of these allegations. The Respondents' position in this regard is belied by the facts, as reflected in the proposed Fourth Amended Complaint, Exhbit A. As alleged in the proposed Fourth Amended Complaint, Exhibit A, Petitioner had reported the medicare fraud that is the subject of his qui tam action directly to the defendant hospitals as well as to the federal government well before the publication of the news articles. *See* Exhibit A at 37, 39, 41, 42. The Respondents' suggestion that Petitioner's *qui tam* action is a parasitic lawsuit based upon newspaper articles which appeared in the *Virginia Times* beginning in March 2005 is disingenuous in that Respondents were already aware of Petitioner's complaints regarding this medicare fraud and retaliating against Petitioner for his whistleblowing concerning the fraudulent billing well over a year before the first *Virginia Times* article.

In *United States v. Shotwell Manufacturing Co. et al.*, 355 U.S. 233 (1957), this Court granted certiorari and remanded the case directly to the district court for the purpose of allowing the government to submit newly discovered evidence pertaining to the issue of suppression of evidence. Such an outcome would be appropriate in this case in order to allow Petitioner to correct any perceived defects in his jurisdictional allegations.

2. THE GRANT OF CERTIORARI IN GRAHAM COUNTY SOIL AND WATER CONSERVATION DISTRICT, ET AL. V. UNITED STATES, EX REL. KAREN T. WILSON

On June 22, 2009, the Court granted certiorari in *Graham County Soil and Water Conservation District, et al. v. United States, ex rel. Karen T. Wilson*, No. 08-304. Oral argument is scheduled to take place November 30, 2009. The *Graham County* case involves interpretation of the jurisdictional bar of 31 U.S.C. § 3730(e)(4). As such, the *Graham County* case, like this case, seeks to find "the golden mean between adequate incentives for whistle-blowing insiders with genuinely valuable information and discouragement of opportunistic plaintiffs who have no significant information to contribute of their own." *United States ex rel. Springfield Terminal Ry Co. v. Quinn*, 14 F.3d 645, 649 (D.C. Cir. 1994). Many of the same considerations involved in resolving the *Graham County* case would be involved in this case.

For these reasons, the denial of certiorari in this case should be reconsidered and determined after the *Graham County* case is decided.

CONCLUSION

For the reasons set forth above, as well as those contained in the petition for writ of certiorari, petitioner prays that the Court grant rehearing of the order of denial, vacate that order, grant the petition and review the judgment and opinion of the Fourth Circuit or, alternatively, remand this case to the District Court with instructions to allow the filing of petitioner's fourth amended complaint.

Respectfully submitted,

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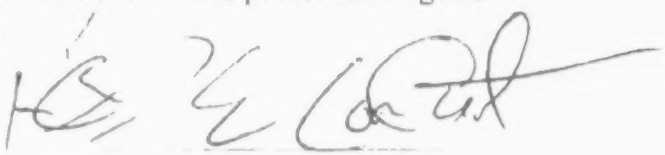
CERTIFICATE OF GOOD FAITH

The undersigned hereby certifies that this petition for rehearing is restricted to the grounds specified in Rule 44.2 of the Rules of the Supreme Court and is presented in good faith and not for delay.



Richard E. Condit
Counsel for Petitioner

APPENDIX

APPENDIX — PROPOSED FOURTH AMENDED COMPLAINT

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

Civil Action No. 3:06cv180
FOURTH AMENDED
COMPLAINT

UNITED STATES OF AMERICA,
ex rel. Lokesh Vuyyuru, M.D., and individually

Plaintiffs,

vs.

Gopinath Jadhav, M.D., Southside Gastroenterology Associates, Ltd. Petersburg Hospital Company, LLC The Cameron Foundation, a Virginia non-profit corporation,

and

Columbia/HCA John Randolph, Inc.

Defendants.

Plaintiffs, United States of America ex rel. Lokesh Vuyyuru, M.D. and Lokesh Vuyyuru, M.D., individually, file this Fourth Amended Complaint against **Gopinath Jadhav, M.D., Southside Gastroenterology Associates, Ltd, Petersburg Hospital Company, LLC, The**

Cameron Foundation, a Virginia non-profit corporation, and Columbia/HCA John Randolph, Inc. and in support thereof alleges as follows:

JURISDICTION AND PARTIES

1. Plaintiffs in this action are the United States of America and Lokesh Vuyyuru, M.D.

2. Lokesh Vuyyuru, M.D., (referred to herein as "Vuyyuru" or "Relator") is a citizen of the United States of America and a resident of Chesterfield, County Virginia.

3. Lokesh Vuyyuru, M.D. brings this action on behalf of the United States of America pursuant to 31 U.S.C.A. § 3730(b)(1) and 31 U.S.C.A. § 3732(a).

4. Lokesh Vuyyuru, M.D. brings this action under 28 U.S.C.A. § 1331.

5. Defendant **Gopinath Jadhav, M.D** ("Jadhav") is a Gastroenterologist in the Commonwealth of Virginia, residing at 9005 Springbrook Ct. in Henrico County, Virginia, 23229. He is the sole shareholder, President and director of defendant **Southside Gastroenterology Associates, Ltd. ("SGA")** a Virginia corporation. Jadhav acted both individually and on behalf of SGA, within the scope and course of his employment and agency with SGA, at all times as stated herein.

6. Defendant **The Cameron Foundation, a Virginia non-profit corporation** is the successor in interest to **The Hospital Authority of the City of Petersburg, a political subdivision of the Commonwealth of Virginia** which operated **Southside Regional Medical Center** until its sale on or about 2003 to defendant **Petersburg Hospital Company, LLC ("PHC")** a Virginia limited liability company, which has owned and operated Southside Regional Medical Center from that time until the present. Defendants Cameron Foundation as successor in interest and PHC are referred to herein as "**SRMC**" or "Southside Regional Medical Center".

7. Defendant **Columbia/HCA John Randolph, Inc.** is a Virginia corporation owning and operating John Randolph Medical Center ("**JRMC**" or "John Randolph Medical Center").

8. As required under the False Claims Act, 31 U.S.C. § 3730(b)(2), the Relator has provided the Attorney General of the United States and the United States Attorney for the Eastern District of Virginia, Richmond Division with a statement of all material evidence and information related to the complaint. This disclosure statement supports the existence of charging for improper and fraudulent medical procedures and the reliance by the United States government on invoices for the improper and fraudulent medical procedures.

9. This court has jurisdiction over this matter pursuant to 28 U.S.C.A. § 1331, 31 U.S.C. §§ 3730(b) and 3732(a) in that the claims for relief in this action are brought in the name of the United States government.

10. Venue is proper under 31 U.S.C.A. § 3732 in that defendants reside in this judicial district and the acts complained of occurred within this jurisdiction.

FACTS

11. Lokesh Vuyyuru, M.D. is a medical physician, board certified in Gastroenterology and previously in Internal medicine as well, who was at various times herein licensed in the Commonwealth of Virginia.

12. Relator became director of Gastroenterology at John Randolph Medical Center in 2001, and was assistant director of Gastroenterology at John Randolph Medical Center from on or about 2002 through 2004.

13. Relator was a member of the committee for Gastroenterology at Southside Regional Medical Center from on or about 2002 to 2003.

14. From on or about 1997 to 2003, Relator was a member of the department of medicine at Southside Regional Medical Center.

15. From on or about 2000 to 2002, Relator was the investigating committee member for peer review at Southside Regional Medical Center for the medical charts of Dr. Jadhav.

16. From on or about 1998 through 2003, Relator was a member of the endoscopy committee at Southside Regional Medical Center.

17. In 1997, Relator learned that Dr. Jadhav while performing colonoscopies routinely took a biopsy of the ***Valvula Bauhini*** also known as **Ileocecal Valve** (**"IC Valve"**) with a stated impression of "lipoma," when he was unable to find a polyp. This practice continued through March 2005, and was reflected in medical records and actually observed by medical staff including but not limited to nurses Betsy Jernigan, Beverly Horton, Florence Challis and Donna Newmyer.

18. The IC-Valve always has an appearance similar to lipoma, which is a normal condition.

19. Further, lipoma is a benign disease, which does not require any biopsy.

20. Dr. Jadhav conspired with SRMC and JRMC to perform the unnecessary medical procedures with the purpose of charging Medicaid and Medicare as well as private insurance companies for the unnecessary

medical procedure for the sole purpose of enhancing his income and that of SRMC and JRMC.

21. As another example of the systematic practice of performing unnecessary medical procedures with the purpose of charging Medicaid and Medicare for the unnecessary medical procedures for the sole purpose of enhancing his income and that of SRMC and JRMC, on December 11, 2002, Dr. Jadhav treated a 74 year old black female at JRMC who was unable to swallow, had stopped eating and was unable to swallow barium. Under the circu mstances, such a patient was clearly in need of an Esophago Gastro Duodonoscopy ("EGD") with Percutaneous Endoscopic Gastrostomy ("PEG") tube placement. Under such circumstances, it is medically unnecessary to perform an EGD with biopsy one day followed by PEG tube placement the following day. By performing the procedures on two separate days, Dr. Jadhav is able to bill for two procedures at a higher rate than if he performed the EDG with PEG tube placement which is all that is medically necessary. Relator personally obtained a copy of the medical records pertaining to this patient on January 10, 2003 by printing the record from the JRMC computer. The copy of the record obtained by Relator in this fashion indicates that it was printed by Relator. Relator was authorized to

obtain a copy of this record without violating privacy laws due to his position at JRMC. To the best of Relator's recollection, he delivered a copy of the medical record to either the FBI or the Virginia Board of Medicine shortly after obtaining the record and certainly before March 2005 when information regarding the Defendants' fraudulent billing practices was published in the *Virginia Times*. The offices of the FBI and/or the Virginia Board of Medicine should be in possession of records which would confirm the exact date the medical record of this patient was provided to those offices by the Relator. Given the age of the patient, it is a safe assumption that either Medicare or Medicaid was billed by Dr. Jadhav and JRMC in connection with this unnecessary procedure.

22. As another example of the systematic practice of performing unnecessary medical procedures with the purpose of charging Medicaid and Medicare for the unnecessary medical procedures for the sole purpose of enhancing his income and that of SRMC and JRMC, on November 28, 2001, at JRMC, Dr. Jadhav performed a colonoscopy on a 65 year old female without conclusive results. The following day, Dr. Jadhav performed an EGD with BICAP cautery. Notwithstanding in less than six months, Dr. Jadhav performed another colonscopy and biopsied the IC-Valve, a wholly

unnecessary procedure coupled with the fraudulent and medically unnecessary biopsy of the IC-Valve. Relator obtained a copy of the medical record of this patient on October 20, 2004 in the same manner that he obtained the record of the patient described above in paragraph 21. To the best of his recollection, Relator provided a copy of the record to the FBI shortly thereafter and certainly sometime before March 2005. The FBI should be in possession of records which would establish the exact date this patient's record was provided to the FBI. Due to the patient's age, it is a safe assumption that either Medicare or Medicaid was billed by JRMC and Dr. Jadhav in connection with the unnecessary procedure described above.

23. As another example of the systematic practice of performing unnecessary medical procedures with the purpose of charging Medicaid and Medicare for the unnecessary medical procedures for the sole purpose of enhancing his income and that of SRMC and JRMC, on July 11, 1997, at JRMC, Dr. Jadhav performed an upper endoscopy on a 72 year old female and found benign gastric polyps. However, without any medical justification and completely unnecessarily, in just over one month he repeated an upper endoscopy making the same findings. Relator obtained a copy of the medical record of this patient on May 26,

2003 in the same manner that he obtained the record of the patient described above in paragraph 21. To the best of his recollection, a copy of the medical record was provided to the FBI prior to March 2005. The FBI should be in possession of records which would establish the exact date this patient's medical record was delivered to FBI agents. Due to the patient's age, it is safe to infer that either Medicare or Medicaid was billed by JRMC and Dr. Jadhav in connection with the unnecessary procedure described above.

24. As another example of the systematic practice of performing unnecessary medical procedures with the purpose of charging Medicaid and Medicare for the unnecessary medical procedures for the sole purpose of enhancing his income and that of SRMC and JRMC, on November 27, 2001, at JRMC, Dr. Jadhav performed a colonoscopy on a 72 year old female finding among other things, acute ischemic colitis involving the left colon and transverse colon. Notwithstanding the findings, on the very same day Dr. Jadhav performed an EGD with biopsy, which was an unnecessary medical procedure. Further, 13 days later, Dr. Jadhav performed yet another colonoscopy with biopsy which was wholly medically unnecessary. Relator obtained a copy of this patient's medical record on April 24, 2003 in the same manner that he obtained the record of the patient

described above in paragraph 21. To the best of his recollection, Relator delivered a copy of this patient's record to the FBI sometime before March 2005. The FBI should have a record of the exact date the medical record of this patient was delivered to the FBI by Relator. The medical record of this patient indicates that the payor for services in connection with this unnecessary procedure was "Medicare A & B"

25. As another example of the systematic practice of performing unnecessary medical procedures with the purpose of charging Medicaid and Medicare for the unnecessary medical procedures for the sole purpose of enhancing his income and that of SRMC and JRMC, on December 14, 1999, at JRMC, Dr. Jadhav performed a colonocopy on a 71 year old female and diagnosed her with, inter alia, acute colitis. However in 20 days, Dr. Jadhav repeated the colonoscopy, which was wholly medically unnecessary. Relator obtained of copy of the medical record of this patient on October 8, 2003 in the same manner that he obtained the record of the patient described above in paragraph 21. Due to the age of the patient, it is safe to infer that either Medicare or Medicaid was billed by JRMC and Dr. Jadhav in connection with the unnecessary medical procedure.

26. The medically unnecessary procedures by Dr. Jadhav generated not only additional income for Dr. Jadhav but for SRMC and JRMC.

27. Additionally, Dr. Jadhav frequently billed for the procedure of a colonoscopy and upper-endoscopy when Dr. Jadhav failed to complete the procedure. The time expended by Dr. Jadhav for a colonoscopy was at times less than five minutes and for a upper-endoscopy less than three minutes, when to properly perform such a procedure more time would be required and further, by failing to examine the colon thoroughly he would not observe the lesions, polyps and cancer, which were discovered by Relator when he reviewed the charts and performed a subsequent workup upon the patients. Despite being confronted with the results of the investigation by the Relator, his practice was modified for only a short duration before he returned to the improper and fraudulent methods. JRMC and SRMC knew or should have known of the fact that the procedures were not being performed but were being billed and also billed for the procedures as completed procedures when the procedures were incomplete.

28. Medicaid is a federally assisted grant program for the states. Medicaid enables the states to provide medical assistance and related services to needy individuals. The Health Care

Financing Administration ("HCFA"), administers Medicaid on the federal level. Within broad federal rules, however, each state decides who is eligible for Medicaid, the services covered, payment levels for services and administrative and operation procedures. The state directly reimburses physicians and medical facilities for services covered, with the state obtaining the federal share of the payment from accounts which draw on funds of the United States Treasury. 42 C.F.R. §§ 430.00 to 430.25. The Federal share of each state's Medicaid program varies state by State.

29. The Commonwealth of Virginia through its Department of Medical Assistance Services ("DMAS") participates in the Medicaid program.

30. At all times relevant to this Complaint, the United States provided funds to the Commonwealth of Virginia, DMAS through the Medicaid program, pursuant to Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq. Enrolled providers of medical services to Medicaid recipients are eligible for reimbursement for covered medical services under the provisions of Title XIX of the 1965 Amendments to the Federal Social Security Act. By becoming a participating provider in Medicaid, enrolled providers agree to abide by

the rules, regulations, Policies and procedures governing reimbursement, and to keep and allow access to records and information required by Medicaid. In order to receive Medicaid funds, enrolled providers, together with authorized agents, employees and contractors, are required to abide by all the provisions of the Social Security Act, the regulations promulgated under the Act, and all applicable Policies and procedures issued by the Commonwealth of Virginia, DMAS.

31. Among the rules and regulations which enrolled providers agree to follow are, inter alia: (a) bill DMAS for any of the covered services or items which are medically necessary; (b) neither bill DMAS for any services or items which were not performed or delivered in accordance with all applicable policies, nor submit false or inaccurate information to DMAS relating to provider costs or services; (c) not engage in any act or omission that constitutes or results in over utilization of services; (d) comply with state and federal statutes, policies and regulations applicable to Medicaid program; and (e) not engage in any illegal activities related to the furnishing of services to recipients.

32. From 1996 to 2005, Dr. Jadhav performed 316 colonoscopies at SRMC and JRMC which were billed directly to Medicaid through DMAS.

Unnecessary biopsies as described above were performed and billed to Medicaid in 119 of the 316 total cases.

33. At all times relevant to the complaint, defendants were participating Medicaid and Medicare providers, and submitted claims to Medicaid and Medicare for the biopsies of the Ileocecal Valve ("IC Valve"), and other fraudulent billings. Further, upon information and belief, defendants further defrauded the United States of America by similar charges and billings to CHAMPUS, and insurance, MCO's and HMO's funded by Medicaid, including but not limited to Health Keepers Plus, Virginia Premier, CareNet of Southern Health, Sentara Medicaid Program and Optimum Choice.

34. Defendant Dr. Jadhav for a period of nearly 10 years failed to dictate the required consult note before billing, making minor notations only in the chart, while billing for a level 3 to 5 consult. At SRMC (different than his practice at JRMC) that Dr. Jadhav routinely and in most cases did not provide a dictation for consults and failed to perform general multi-system examinations failing to follow CMS guidelines since 1997 for which he billed or caused to be billed to the United States Government as though the CMS guidelines were being met.

35. Defendants charged or caused to be charged the United States government for improper and fraudulent medical procedures and the United States government in reliance on these invoices for the improper and fraudulent medical procedures paid substantial sums of money, the amount of which is yet to be determined.

36. Defendants knowingly or willfully made or caused to be made false statement or representations of material fact in applications for payment under the Medicare program by billing for the medical procedures related to the biopsy of the IC Valve.

37. In 2000, Relator informed the Chief Executive Officer of SRMC, David Dunham, that Dr. Jadhav was performing unnecessary routine biopsies of the IC Valve resulting in fraudulent billing to Medicare and Medicaid. Dr. R. Thomas Ross, the Chief of Staff at SRMC, asked Relator to provide patient records and identification numbers to verify Relator's allegations concerning unnecessary biopsies. Relator provided the requested patient records to Dr. Ross on or about July 1, 2001. Even after Relator provided the requested records, SRMC continued to allow Dr. Jadhav to perform the unnecessary procedures. On information and belief, Dr. Jadhav and SRMC continued to submit claims to Medicare and

Medicaid for payment for the unnecessary procedures.

38. In 1999, Relator hired a billing clerk who had formerly worked for Dr. Jadhav. This employee informed Relator of the details of Dr. Jadhav's billing practices.

39. In 2001, Relator became the Director of Endoscopy at JRMC. In his capacity as Director of Endoscopy, Relator had occasion to review the charts of endocscopy patients and found instances of improper billing and unnecessary procedures performed by Dr. Jadhav at JRMC. In 2001, Relator informed the Chief Executive Officer of JRMC, Dan Wetta, of Dr. Jadhav's routine practice of performing unnecessary IC Valve biopsies at JRMC. At the request of CEO Wetta, Relator reported the matter to Linda Ault in the Quality Assurance Department of JRMC. Despite having been specifically notified of Dr. Jadhav's fraudulent, JRMC continued to allow the fraud to take place and to submit claims for payment of hospital bills incurred in connection therewith. One specific example of such billing to Medicare is contained in the record of the patient described in paragraph 24 above for an unnecessary procedure performed on November 27, 2001.

40. Defendants continued their practice and conspired to injure the reputation of Relator by injurious and fraudulent manipulation of the peer review process, by suspending medical privileges and by filing complaints with the Virginia Board of Medicine.

41. After Relator learned that certain fraudulent practices were occurring at JRMC and SRMC, he notified government authorities.

a. In October, 1998, Relator first met with Assistant United States Attorney, S. David Schiller and informed him of Dr. Jadhav's fraudulent billing practices.

b. Mr. Schiller assigned FBI agent Christopher Freese to investigate the allegations made by Relator. Relator first met Agent Freese in late 1998. In numerous meetings with Agent Freese during the years of 1999 and 2000, Relator provided patient records showing the unnecessary procedures which resulted in fraudulent billing by Defendants. Relator also met with FBI Agents, Vanosten and Irons and provided them with patient records which illustrated the various specific types of fraudulent billing practices in which the Defendants engaged.

c. In 2000, Relator first met with the Center for Quality Health, (CQH) a division of the

Virginia State Department of Health. He reported the fraudulent billing practices to this office. Over the course of 9 to 10 meetings in 2001 and 2002, Relator provided extensive documentation of Dr. Jadhav's performance of unnecessary procedures at SRMC.

d. As a result of Relator's contact with CQH, Relator's allegations of frauduient billing by Dr. Jadhav and SRMC were taken up by the federal Center for Medicare and Medicaid Services office in Philadelphia, PA which culminated in an unannounced inspection of SRMC on or about February 20, 2003 and suspension of SRMC's Medicare certification.

42. In and about December 2001, the Chief of Staff from SRMC offered to Relator that if he kept silent with regard to the ongoing Medicare/ Medicaid fraud that "They will make you rich" which Relator rejected. Later, another member of the Medical Staff for SRMC threatened Relator that if he did not back off, SRMC would hurt some of Relator's friends. Eventually, SRMC conspired and did do injury to Relator by bring spurious charges to remove Relator's hospital privileges and by filing charges against Relator with the Virginia Board of Medicine.

43. Relator was an "original source" of the information describing the fraudulent practices under the statute for reporting false

claims against the United States within the meaning of 31 U.S.C.A. § 3730(e)(4)(B).

44. Following Relator's objections and disclosures to government authorities, he has been subjected to intolerable, insulting, damaging and discriminatory treatment.

45. At all times material to this Complaint, the defendants actually knew the truth regarding, acted in reckless disregard of the truth regarding, or acted in deliberate ignorance of the truth regarding the facts that defendants' routine biopsy of the IC valve was medically unnecessary and fraudulent and that defendants' billing Medicare for this procedure was illegal and improper.

46. On information and belief, defendants knowingly, as that term is defined by 31 U.S.C. § 3729(b), filed, or caused to be filed, with the federal government applications for the payment of United States' government funds, and on information and belief, caused substantial amounts of moneys of the United States government to be paid to themselves on the submission of claims for payments for he above referenced medical procedures which were knowingly fraudulent and part of a scheme to be paid for unnecessary medical procedures.

47. As a result of the retaliation, Dr. Vuyyuru has suffered substantial damage to his reputation, his business and profession, lost past and future income, legal expenses, expense associated with protecting his family for fear of physical and emotional violence and harm, distress, embarrassment, humiliation, fear, anxiety and stress, pre and post judgment interest.

FIRST CLAIM
Violation of 31 U.S.C. § 3729(a)(1)

48. The Relator repeats the allegations of paragraphs 1 - 47 contained in this Complaint.

49. On information and belief, defendants knowingly presented, or caused to be presented and filed, a false or fraudulent claim for payment or approval with the United States Government.

50. Defendants had actual knowledge of the falsity of the claims they submitted, acted in deliberate ignorance of the truth or falsity of these claims, or acted in reckless disregard of the truth or falsity of these claims.

51. By reason of the violation of 31 U.S.C. § 3729(a)(1) defendants have knowingly or recklessly damaged the United States government in an amount as yet not precisely determined, which amount is at minimum tens

of thousands of dollars and may be several million dollars.

SECOND CLAIM
Violation of 31 U.S.C. § 3729(a)(2)

52. The Relator repeats the allegations of paragraphs 1 - 52 contained in this Complaint.

53. On information and belief, defendants knowingly made or used or caused to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the Government for defendants' fraudulent medical and billing practices set forth above.

54. By reason of the violation of 31 U.S.C. § 3729(a)(2) defendants have knowingly or recklessly damaged the United States government in an amount as yet not precisely determined, which amount is at minimum tens of thousands of dollars and may be several million dollars.

THIRD CLAIM
Violation of 31 U.S.C. § 3729(a)(3)

55. The Relator repeats the allegations of paragraphs 1 - 54 contained in this Complaint.

56. The defendants in performing the acts set forth above, conspired to defraud the United

States government in violation of 31 U.S.C. § 3729(a)(3) by getting false or fraudulent claims allowed or paid to the damage of the United States' government.

FOURTH CLAIM
ACTION UNDER VIRGINIA COMMONLAW AND 31 U.S.C. § 3730(h)

57. Dr. Vuyyuru repeats the allegations of paragraphs 1 - 56 contained in this Complaint.

58. The defendants in performing the acts set forth above conspired to and did unlawfully retaliate against Dr. Vuyyuru because he had reported and complained of defendants' fraudulent medical and billing practices and false claims, had investigated such false claims, and had filed or was about to file a civil action under the Federal False Claims Act and the Virginia false claims act.

59. Defendants' retaliation proximately caused injury, damage and losses to Dr. Vuyyuru.

FIFTH CLAIM
ACTION UNDER VIRGINIA CODE § 18.2-500 FOR VIOLATION OF § 18.2-499

60. The Relator repeats the allegations of paragraphs 1 - 59 contained in this Complaint.

61. Under Virginia law, plaintiff Lokesh Vuyyuru, M.D. has a cause of action for violations of § 18.2-499, pursuant to § 18.2-500 which provides as follows:

> § 18.2-500. (Effective January 1, 2006) Same; civil relief; damages and counsel fees; injunctions
>
> A. Any person who shall be injured in his reputation, trade, business or profession by reason of a violation of § 18.2-499, may sue therefore and recover three-fold the damages by him sustained, and the costs of suit, including a reasonable fee to plaintiff's counsel, and without limiting the generality of the term, "damages" shall include loss of profits.
>
> B. Whenever a person shall duly file a civil action in the circuit court of any county or city against any person alleging violations of the provisions of § 18.2-499 and praying that such party defendant be restrained and enjoined from continuing the acts complained of, such court shall have jurisdiction to hear and determine the issues involved, to issue injunctions pendente lite and permanent injunctions and to decree damages and costs of suit, including reasonable counsel fees to complainants' and defendants' counsel.

62. Virginia Code § 18.2-499, provides in pertinent part as follows:

> § 18.2-499. Combinations to injure others in their reputation, trade, business or profession; rights of employees.
>
> A. Any two or more persons who combine, associate, agree, mutually undertake or concert together for the purpose of (i) willfully and maliciously injuring another in his reputation, trade, business or profession by any means whatever or (ii) willfully and maliciously compelling another to do or perform any act against his will, or preventing or hindering another from doing or performing any lawful act, shall be jointly and severally guilty of a Class 1 misdemeanor. Such punishment shall be in addition to any civil relief recoverable under § 18.2-500.
>
> B. Any person who attempts to procure the participation, cooperation, agreement or other assistance of any one or more persons to enter into any combination, association, agreement, mutual understanding or concert prohibited in subsection A of this section shall be guilty of a violation of this section and subject to the same penalties set out in subsection A.

63. Defendants in taking the actions described above acted with malice and without good faith.

64. Defendants violated § 18.2-499 of the Code of Virginia, as amended, proximately causing damages to plaintiff Dr. Vuyyuru.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs, United States of America, ex rel. Lokesh Vuyyuru, M.D. and Lokesh Vuyyuru, M.D. individually pray that judgment be entered against the defendants, jointly and severally:

A. For damages in an amount, presently indeterminable, sustained by the United States as a result of defendants' false claims stated herein and defendants' violations of 31 U.S.C. § 3729(a)(1), (2) and (3), which damages amount pursuant to statute is to be trebled;

B. For fines and penalties of not less than $5,000 per violation and not more than $10,000 as provided by the False Claims Act;

C. For Plaintiffs' attorneys' fees and costs;

D. With respect to Counts Four and Five, plaintiff, Lokesh Vuyyuru, M.D. complains and moves for judgment against the defendants, jointly and severally, in the amount of $95,000,000.00 plus treble damages (count five), pre and post judgment interest, costs, attorney fees (count five) as well as punitive and exemplary damages, jointly and severally, or such other and greater amount as the law deems appropriate.

E. In addition, plaintiff prays for suh further and additional relief at law or in equity that this Court may deem appropriate or proper.

Jury Demand

Plaintiffs United States of America ex rel. Lokesh Vuyyuru, M.D. and Lokesh Vuyyuru individually, demand a trial by jury on all issues so triable.

United States of America
ex rel. Lokesh Vuyyuru, M.D.,
and individually.

By:_____
Counsel